WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2007

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE V.PERIYA KARUPPIAH

Criminal Appeal No.71 of 2007

M.G.R. @ Chidambaram
S/o Srirangan Gounder .. Appellant

-vs-

State by Inspector of Police,
Perumpalai Police Station,
Dharmapuri Distirct.
Crime No.248 of 2003. .. Respondent

Memorandum of Grounds of Criminal Appeal under Section 374(2) of the Criminal Procedure Code against the judgment dated 12.12.2006 made in S.C.No.158 of 2005 on the file of the learned Additional Sessions Judge, Fast Track Court, Dharmapuri.

For Appellant :: Mr.B. Sriramulu
Senior Counsel for
Mr.R. Rajendran

For Respondent :: Mr.P. Kumaresan
Additional Public Prosecutor

JUDGMENT

(JUDGMENT OF THE COURT WAS MADE BY D.MURUGESAN, J.)

The appellant along with two other accused, was tried in S.C.No.158 of 2005 as A1 by the Additional Sessions Judge Dharmapuri. By the Judgment dated 12.12.2006, he was found guilty under Section 302 I.P.C. and was sentenced to undergo life imprisonment and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for three months. Learned Additional Sessions Judge, however, acquitted the other two accused viz., A2 and A3.

2. The deceased is the wife of the appellant/accused. Appellant had suspected the fidelity of the deceased. Therefore, there was a quarrel between them and the deceased had left the company of the

https://hcservices.ecourts.gov.in/hcservices/

appellant and started living with her parents for a period of nine months prior to the date of occurrence. On 16.4.2003 at about 10.45 p.m., the appellant along with two others viz., A2 and A3, came in a TVS 50 moped to the place of occurrence. At that time, the deceased and P.W.1 were sleeping outside the house and more particularly the deceased was sleeping in the nearby cattle shed. The other members of the family including P.W.2 and P.W.3 were sleeping inside the house. On hearing the shouting from the deceased, P.W.1 got up and saw the accused stabbing the deceased on her left chest. While she also shouted, the accused threatened her that if she shouted, she would also be murdered. Thereafter, the accused flood away from the scene of the occurrence leaving the TVS 50 moped. P.W.2 also heard the shouting, came from the scene of occurrence and saw the accused running away from the scene of occurrence. The deceased had succumbed to the injuries on the spot and P.W.1 gave the complaint Ex.P.1 at 6.30 a.m. on 17.4.2003 to P.W.9, the Sub-Inspector of Police, Perumpalai Police Station.

3. P.W.9 registered a case in Cr.No.248 of 2003 under Section 302 and 506(ii) I.P.C., Ex.P.12 is the F.I.R. He sent the same to the Judicial Magistrate concerned through P.W.10, Gr.1 Police Constable and submitted the copies of the F.I.R. and other records to the in-charge Inspector to Police, Hokenakkal Police Station and other higher officials. On receipt of the records relating to Ex.P.12 from P.W.9, P.W.12 the Inspector of Police went to the scene of occurrence, and prepared Ex.P.13 rough sketch in the presence of witnesses. P.W.12 conducted the Inquest in the presence of Panchayatdars and sent the body of the deceased for post mortem through P.W.11, Head constable and recovered M.Os.7 to 9, blood stained saree, jacket and inskirt of the deceased through P.W.11. He also made arrangements to take photographs of the deceased in the scene of occurrence and handed over the case records to P.W.13 regular Inspector of Police of Pennagaram Police Sation, who had returned from other duty. P.W.13 took up further investigation and recorded the statement of witnesses. Since the first accused surrendered before the Harur Judicial Magistrate's Court, he has taken the first accused on police custody and recorded his confession statement in the presence of the witnesses. As per the admissible portion of the confession statement, P.W.13 recovered TVS 50 moped, bloodstained knife and shirt in the presence of the witnesses. Thereafter he arrested A2 and A3 on 27.5.2003 at Sanarpatti Bus Stop and sent them to judicial custody. He sent the material objects to the forensic lab and obtained report from the lab. After completion of the investigation, he filed the charge sheet before the Court for the offence under Sections 302 and 302 r/w 109 I.P.C. against the accused on 28.12.2003.

4. To prove the charges against the accused, the prosecution examined 13 witnesses, marked 16 exhibits and produced 9 Material Objects. The accused was questioned under Section 313 Cr.P.C. as to the discriminating materials available against him. However, the accused denied each and every discriminating materials as false and stated that the case has been falsely foisted on him.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

5. In support of the appellant, Mr.B. Sriramulu, learned Senior Counsel submitted that the prosecution case suffers from number of infirmities not only at the instance of the investigating officer, but also in view of lot of contradictions in the evidence of the prosecution witnesses.

6. Firstly, he would submit that P.W.1 could not have seen the occurrence, as admittedly, according to her, the accused was stabbing the deceased only after hearing the noise of the deceased. There was only one stab injury on the body of the deceased, who was sleeping at the time of occurrence. If the above statement of P.W.1 is taken as true, she could not have witnessed the accused stabbing the deceased. Similarly, the evidence of P.W.2 cannot be considered as one of the witnesses speaking about the occurrence. As admittedly, she also came after hearing the noise and saw the accused running away from the scene of the occurrence. Both the evidence of P.W.1 and P.W.2 cannot be a ground for believing the case of the prosecution as to the involvement of the accused in the offence. He would also submit that in any case there are lot of contradictions as to whether at the time of occurrence, which is said to have taken place at 10.45 p.m. in the night, the light was burning to enable the witnesses to see the occurrence. He would also submit that the presence of the accused in the scene of occurrence has not been proved and there are vital contradictions as to the recovery of TVS 50 moped also. He would further submit that the recovery of the moped from the scene of occurrence may prove the presence of the accused as spoken to by P.W.1 and P.W.2. Nevertheless, on receipt of the complaint at 6.30 a.m. on 17.4.2003, P.W.12, Inspector of Police, came to the scene of occurrence and prepared Ex.P.2, Observation Mahazar wherein P.W.12 has shown the moped. The presence of the moped in the scene of occurrence was also spoken to by P.W.1 and P.W.2 as well as P.W.4. Nevertheless, an extreme different stand was taken before the Court through the Investigating Officer P.W.13 that the seizure of the bike entirely in a different place. The said contradictions between the evidence of P.W.12 and P.W.13 who are the investigating officers cannot be considered to be a meager defect in the investigation and the same goes to the very genuineness of the implication of the accused and go by them mutually trust like the case of the prosecution. In this context, learned Senior counsel further submitted that the investigating officer miserably failed even to find out the owner of the moped. He would also submit that none of the witnesses examined before the court was present at the time of inquest and the same throws serious doubt about their evidence, more particularly P.W.1 in the scene of occurrence or the manner in which the P.W.1 has spoken as to the occurrence. Lastly he would submit that though the court below has framed the charge on the basis that A1 due to suspicion on the fidelity of his wife viz., the deceased had committed the murder, none of the witnesses has not spoken about the said suspicion on the fidelity of the deceased.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

7. Mr.P. Kumaresan learned Additional Public Prosecutor on the other hand submitted that it is true that there are two versions as to the recovery spoken by the prosecution through P.W.12 and 13 and even if the said evidence is eschewed, the prosecution has satisfactorily proved the case through the eye witness viz., P.W.1 and the evidence P.W.2 whose evidence corroborates the evidence of P.W.1 clubbed with the medical evidence. Hence, learned Additional Public Prosecutor would submit that merely because the investigation was defective, it would not materially affect the case of the prosecution, and therefore, the conviction and sentence require no interference.

8. As much has been argued on the recovery and it is contended by the learned Senior counsel that the contradictions as to the recovery in the evidence of P.w.12 and P.W.13 materially affects the case of the prosecution and the same is disputed by the learned Additional Public Prosecutor, we are inclined to first consider such submissions. It has been held by the Honourable Apex Court in various cases, that merely because of the irregularity or defect or even the laxity in the investigation or on the part of the investigating officer by himself would not affect the case of the prosecution and the same cannot be a ground for acquitting the accused in the event, the prosecution is able to satisfy the court as to the charges, apart from the fact that such defective or irregularity or laxity would not materially affect the prosecution case. How far the defects in the investigation pointed out by either side would affect the prosecution case is a matter for further consideration. Seizure of M.O.2, TVS 50 moped is a vital material piece of evidence for the prosecution to prove that the accused was present at the time of commission of offence and thereby the evidence of P.W.1 and P.W.2 implicating A1 could also be considered. It is the admitted case of the prosecution that immediately on the complaint given by P.W.1 to P.W.9, the same was taken on file and investigation was commenced by P.W.12. He went to the scene of occurrence and prepared the Observation Mahazar Ex.P.2. In the Observation Mahazar, the TVS 50 was shown. In the Rough Sketch Ex.P.13 drew by P.W.12 also the TVS 50 was shown. Both the above documents were prepared by P.W.12, who commenced the investigation at the earliest point of time. We have no reason to disbelieve the said Observation Mahazar . Apart from that, there is no explanation whatsoever as to the presence of the TVS 50 in the place of the occurrence. The above fact also fortifies from the evidence of P.W.1, 2, 4 while they speak as to the fact that after the commission of the offence A1 along with two others have flood away from the scene of occurrence. It is also seen from the evidence of P.Ws.1 and 2 that after the observation mahazar was prepared, the moped TVS 50 was taken by the police from the scene of occurrence. Hence, from the above discussion, it is clear that the prosecution has made attempt at the initial stage to show that the accused left the moped in the scene of occurrence and ran away and that motor cycle was seized by the police.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

9. As far as the ownership of the bike is concerned, we must openly record our dissatisfaction that the investigating officer has not cared to investigate as to the ownership of the motor cycle. Though, the said aspect may not be relevant in all cases, but in the facts and circumstances of the case, we deem it to consider as an important piece of evidence to show the presence of the accused in the scene of occurrence as spoken to by P.Ws.1 and 2. Strangely the Investigating Officer P.W.12, who has taken the motor cycle from the scene of occurrence, as could be seen from the evidence, has not come out with true version to the Court by saying that the moped has been taken to the police station and there after sent to the Court. The above defect in the investigation did not stop at that stage as the prosecution has taken an entirely different story when P.W.13 the investigating officer has come to the scene. According to him, the accused surrendered before the Court on 22.4.2003 and he gave a confession statement and on the basis of the admissible portion of the confession statement Ex.P.4 the moped was seized from a bush which is 2.k.m. away from the scene of occurrence at Kottampatti, which is certainly not the place of occurrence. Even in the absence of any evidence with regard to recovery, the prosecution case can stand on his own legs through other evidence. In the given case as the prosecution has taken entirely a contradictory stand as to the recovery, in our opinion, the contradiction would certainly affect the prosecution case as to the presence of the accused in the scene of occurrence as spoken by P.Ws.1 & 2. By the same reason the evidence of P.W.1 and 2 also cannot be believed as to the recovery. When the Observation Mahazar Ex.P.2 was prepared in the presence of P.W.6 Rajamanickem, Village Administrative Officer and his assistant Kuppusamy. The said Kuppusamy was not examined. Strangely P.W.6 Rajamanickem, who was present when M.O.2, the TVS 50 was seized by P.W.12 from the scene of occurrence, was again shown as witness to speak about not only regarding the seizure of the moped but also the seizure M.O.1 knife and M.O.6 blood stained shirt worn by the accused by P.W.13. Surprisingly this witness is silent about the seizure of the moped TVS 50 from the scene of occurrence giving a go by to his presence and he only speaks about the seizure of M.Os.1 and 6 made by P.W.13.

10. The combined reading of the above only discloses that it is not a mere failure on the part of the prosecution case to prove the same but is a material defect. Such material defect and contradictions themselves have destroyed the very case of the prosecution. We are pointing out thin only because to judge as to whether P.W.1 could have witnessed the scene of occurrence or not. When once the above recovery is not accepted by us then the evidence that to the accused along with two others ran away from the scene of the occurrence after leaving the moped also cannot be accepted. Though a fair attempt was made by the Learned Additional Public Prosecutor that even if the recovery part is eschewed, going by the evidence of P.W.2 and 4, it is amply proved that the accused had committed murder, we are at last to understand whether this court is for the purpose of consideration as

https://hcservices.ecourts.gov.in/hcservices/

to the involvement of the accused, could accept a portion of the evidence and reject the rest of the evidence of P.W.1 and P.W.2. In the circumstances like this, it would not be safe to accept the portion of the evidence and reject the evidence which is against the prosecution. On the other hand, on the basis of the findings of the criminal jurisprudence, such consideration leading to benefit should only be extended in favour of the accused.

11. In this background the prosectuion case as put forth through P.W.1 should be considered. According to P.W.1, she was present in the scene of the occurrence which took place around 10.40 p.m. on 16.04.2003 and it is gone out in the evidence that the deceased succumbs injuries on the chest and there is no care for anybody to save the life of the deceased. In these circumstances, the conduct of P.W.1 in not lodging a complaint by herself or making an attempt to inform some other family members who were also present in the house till 6.30 a.m. on the next day. Though the statement under Section 161 Cr.P.C. was recorded from her on 19.4.2003, the said statement was received by the Court only on 21.4.2003. Nevertheless two subsequent statements were recorded from her and one statement was on 27.5.2003 and the said statement reached the court only on 16.08.2004 i.e., after one year and three months. There is absolutely no explanation by the investigating officer as to the above delay. Here again, if the delay in sending the statement to the Court by itself may not be considered to be a vital in all cases but, again, in this case the evidence of P.W.1 is questioned on the ground that she could not have seen the occurrence. The said delay assumes importance. One more fact to be mentioned as to the above submissions made by the learned Senior Counsel appearing for the appellant that not only P.W.1, but also the other witnesses examined on behalf of the prosecution, were shown as witness in the inquest. It is not sufficient that they were present at the inquest or they were not available, as atleast P.W.1 was present throughout the inquest. But except P.W.1, others were not examined, throwing serious doubt about the inquest itself.

12. Yet another contradiction that has been pointed out by the learned Senior Counsel is as to whether P.W.1 could have seen the occurrence. P.W.1 has spoken as to the light that was burning near the scene of occurrence. But, P.W.3 has not supported the case much less the investigating officer, P.W.12 who was the first officer and who happened to arrive at the scene of occurrence, did not notice any light burning and it is improved version through the evidence of P.W.13 only and the observation mahazar also does not show the presence of any light.

13. For all the above reasons, we do not agree with the submissions made by the learned Additional Public Prosecutor that there was only a mere defect in the investigation and therefore the prosecution case should not be disbelieved. As we have found that the defect has materially affected the very case of the prosecution as to not only implication of the accused but also the very fact that P.w.1,

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

who is the complainant and the only witness, could have informed the other witnesses/neighbors about the scene of occurrence. Hence, the appellant is entitled to the benefit of doubt.

14. Accordingly the conviction and sentence imposed by the learned Additional Sessions Judge, Fast Track Court, Dharmapuri, in S.C.No.158 of 2005 is set aside and the appeal is allowed. The appellant shall be released forthwith if he is otherwise required in any other case. Learned counsel for the petitioner has submitted that the fine amount has already been paid by the appellant before the lower court. It is directed that the lower court shall refund the said fine amount to the appellant.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ggs

To

1. The Additional Sessions Court (Fast Track Court No.1), Dharmapuri.
2. -do- through the Pricipal Sessions Judge, Dharmapuri @ Krishnagiri
3. The Superintendent, Central Prison, Salem.
4. The District Collector, Dharmapuri
5. The Director General of Police, Chennai-4
6. The Public Prosecutor, High Court, Madras.
7. The Inspector of Police, Perumpalai Police Station, Dharmapuri District.
8. The Joint Secretary to Government of Tamil Nadu, Public (Law and Order), Seretariat, Fort St.George, Chennai -9.

1 cc To Mr.R.Rajendran, Advocate, SR.73244.

Crl.A.No.71 of 2007

VRK(CO)
RVL 29.01.2008

https://hcservices.ecourts.gov.in/hcservices/